

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

James W. Treffinger)

MUR 5388

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("the Commission"),

pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that James W. Treffinger ("Respondent") knowingly and willfully violated 2 U.S.C. § 441a(f).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) and 11 C.F.R. § 111.18(d).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

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IV. The pertinent facts in this matter are as follows:

1. James W. Treffinger was a candidate for the U.S. Senate in New Jersey in the June 6, 2000 Republican primary election. Jim Treffinger for Senate, Inc. ("the Committec") is a political committee within the meaning of 2 U.S.C. § 431(4) and is the authorized principal campaign committee for Mr. Treffinger's 2000 and 2002 Senatorial campaigns.

2. The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no person may make a contribution to a candidate for federal office, or his authorized political committees, in excess of \$1,000 per election.¹ 2 U.S.C. § 441a(a)(1)(A). The Act also makes it unlawful for candidates and political committees to knowingly accept any contribution in violation of section 441a. See 2 U.S.C. § 441a(f).

3. In an election cycle, the Act treats primary and general elections as two separate elections. 2 U.S.C. § 431(1)(A); 11 C.F.R. § 110.1(b)(2).

4. While it is permissible to accept contributions for the general election prior to the primary election, an acceptable accounting method must be employed to distinguish between primary and general election contributions. 2 U.S.C. § 441a(a)(6); 11 C.F.R. § 102.9(e); AO 1992-15; AO 1980-122; AO 1988-41.

5. Prior to the 2000 Republican primary election for the U.S. Senate in New Jersey, the Committee received \$227,080 in contributions designated for the 2000 general election. On June 6, 2000, Mr. Treffinger lost the primary election.

¹ The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Conciliation Agreement exclude the changes made by or subsequent to BCRA.

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6. Since Mr. Treffinger did not participate in the 2000 general election, the contributions became excessive and had to be reattributed, redesignated, or refunded within sixty days of the primary election.

7. None of the excessive general election contributions were reattributed, redesignated, or refunded within sixty days.

8. The Committee also received \$10,550 in excessive 2000 primary election contributions. None of the excessive primary election contributions were reattributed, redesignated, or refunded within sixty days of receipt.

9. On July 25, 2003, the Commission issued Advisory Opinion 2003-17 ("the AO") to Respondent. In the AO the Commission noted that the Committee had accepted contributions for both the 2000 and 2002 general elections, and warned that to the extent funds were needed for the purpose of refunding those contributions, no funds could be used to pay legal expenses related to Respondent's criminal defense.

10. At the time the AO was issued, the Committee's refund obligation already exceeded its cash on hand. Nevertheless, beginning in August 2003, Respondent directed the Committee to make payments to his attorneys totaling \$115,394.92. Thus, Respondent directed that, contrary to the explicit language of the AO, funds needed to meet the Committee's refund obligation be used to pay his legal fees.

V. Respondent violated 2 U.S.C. § 441a(f) by accepting \$237,630 in excessive contributions. Respondent will cease and desist from violating 2 U.S.C. § 441a(f).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Fifty-Seven Thousand Dollars (\$57,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.

§ 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

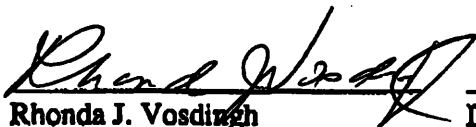
IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY:


Rhonda J. Vosdignh
Associate General Counsel
for Enforcement

4/24/06
Date

FOR THE RESPONDENT:


James W. Treffinger

March 23, 2006
Date